

ZONING BOARD OF APPEALS

AMHERST, MASSACHUSETTS

RULES AND REGULATIONS

The Amherst Zoning Board of Appeals, pursuant to the provisions of Massachusetts General Laws, Chapter 40A, Section 12, hereby adopts the following Rules and Regulations governing the organization, procedures and conduct of the Board, and governing review and action on special permits, variances, appeals and comprehensive permits.

ARTICLE I - ORGANIZATION

Section 1: Members and Officers

The Zoning Board of Appeals shall consist of three regular and four associate members, all residents of the Town of Amherst and appointed by the Select Board. The regular members shall elect all officers of the Zoning Board annually; officers consist of a Chair, Vice-Chair, and Clerk. The regular members shall also adopt and/or amend these Rules and Regulations. For all other issues requiring a vote at a business meeting, all members, regular and associate, may vote, each having one vote. A majority vote is required to adopt or approve business matters covered by this section.

1.1 Chair - In addition to the powers granted by the Massachusetts General Laws and the Amherst Zoning Bylaw and subject to these Rules and Regulations, the Chair shall transact the official business of the Board, advise the zoning staff assistant, appoint such committees as necessary or desirable, direct the general work of the Board, and exercise general supervisory power. He/she shall report any official transactions that have not otherwise come to the attention of the Board at the appropriate hearing/meeting. The Chair shall be responsible for the orderly conduct of the Board's business, whether conducted during a public hearing or a public meeting. The Chair may use her/his discretion to rule out of order unsolicited or irrelevant comments made by members of the public. All points of order subject to these rules shall be decided by the Chair unless overruled by a majority of the Board in session at the time.

1.2 Vice-Chair - The Vice-Chair shall act as Chair when the Chair is absent or is otherwise unable to perform her/his duties. If both the Chair and the Vice-Chair are absent, the Clerk shall act as Chair and shall appoint an acting Clerk.

1.3 Clerk - The Clerk shall be a member of the Board and shall, in the absence of the staff assistant and subject to review by the Chair, supervise all of the clerical work of the Board including: reviewing all correspondence of the Board, sending all notices required by law, preparing rules and orders of the Board, reviewing all applications for compliance with the rules of the Board, keeping dockets and minutes of the Board's proceedings, compiling all required records, and maintaining necessary files and indices. If the Clerk and staff assistant are absent, the Chair shall appoint an acting Clerk.

1.4 Associate Members - Associate members shall sit on the Board in the case of absence, inability to act or apparent conflict of interest on the part of any Board member, or in the event of a vacancy of the regular membership.

Section 2: Zoning Support Staff

A zoning staff assistant, located in the Planning Department, shall attend all public meetings and hearings, and subject to review by the Chair, conduct the administrative work of the Board. Specifically, the staff assistant shall: receive all applications and related plans, written testimony and communications; prepare and review Board correspondences; send all notices required by law; review applications for compliance with the Zoning Bylaw and Rules and Regulations of the Board; prepare Board decisions; prepare related analyses, studies and reports; keep all relevant records of the Board's proceedings; and maintain necessary files and indices.

Agenda's and panel composition shall also be arranged by staff based on availability of regular members and rotation of associate members in the absence of a Full Member. The Clerk shall assume these duties in the absence of staff support.

Section 3: Quorum

Three members/associate members shall constitute the panel for all public hearings or meetings. Three members/associate members shall constitute a quorum.

Section 4: Resignations

If a regular member or associate member resigns from the Board, the resignation shall be submitted, in writing, to the Chair of the Select Board and a copy shall be provided to the Town Clerk. Subject to any applicable restrictions relating to the terms of the appointment of the individual, the resignation may specify a future effective date, so as to allow completion of any pending cases to which the member has been assigned. Unless otherwise stated, the resignation shall become effective upon the filing of same with the Town Clerk.

ARTICLE II - FUNCTIONS OF THE BOARD

Section 1: Public Meetings

Public meetings shall be conducted in accordance with MGL Chapter 39, Section 23A through 23C. Notice for each meeting shall be filed with the Town Clerk and publicly posted on the Town's website, at least 48 hours prior to the meeting, excluding Saturdays, Sundays and legal holidays. Unless otherwise stated in a condition of a permit, notification pursuant to Chapter 40A, Section 11 is not required.

Agendas for Board meetings and hearings, drawn up with the assistance of staff, shall be sent to the Town Manager, Building Commissioner and any interested parties.

Public meetings, while open to the public, are not public hearings. Applications for special permits, variances, appeals or comprehensive permits require a public hearing as described below, and no new evidence or testimony concerning such applications shall be accepted or considered outside of a public hearing.

Business conducted at public meetings shall include:

- Review and approval of final plans required as conditions of a Special Permit or Comprehensive Permit or other decisions of the Board, such as but not limited to improvements to sites, landscaping, signs, lighting, and related matters
- Other documents and/or information required by or related to conditions attached to existing Special Permits, Comprehensive Permit, or other decisions of the Board, such as but not limited to compliance with conditions, enforcement orders, and related matters
- Review and/or approval of *De minimus* changes in previously approved site plans, floor plans, elevations, Management Plans, or other aspects of an approval. In all cases, the purpose of the review is for the Board to determine whether the changes are significant enough to require formal Modification of the permit and/or conditions.
- Other matters for which the Board is not required to hold a public hearing, such as Administrative Meetings.

The Board may seek clarifying information or testimony from the public as it deems necessary during a meeting, but unsolicited comments from the public may be ruled out of order.

A unanimous vote of all members of the Board is necessary for approval of all plans, signs, and all other items required by conditions attached to existing permits.

Section 2: Public Hearings

2.0 Schedule - Public hearings of the Board of Appeals are normally held on the second and fourth Thursday of each month at the Amherst Town Hall. Others may be scheduled as necessary.

2.1 Public Notice - Notice of public hearings shall be published twice, one being two weeks in advance of the hearing, in a newspaper of general circulation for Amherst in accordance with MGL Chapter 40A, Section 11. Notice of public hearings shall be filed with the Town Clerk and publicly posted in accordance with the requirements of the Open Meeting Law, and not less than fourteen (14) days prior to the hearing. In addition, the applicant shall apply for, receive, and submit a Certified List of Abutter's prepared by the Assessor's Office (see application form) and the Town shall send by standard mail, postmarked at least 14 days prior to the date of the hearing, said notice to property owners of land within 300 feet of the property line as well as every abutting City or Town, other relevant Town departments and boards, and any other interested parties.

2.2 Site Visits - The Zoning Board of Appeals views all properties that come before it under applications for special permits, variances, appeals and comprehensive permits unless a decision is made in advance by the Board Chair that no site visit is needed. Applicants will be notified of the site visit, and should be prepared to meet with the Board at the site, usually on the Tuesday preceding the public hearing. The purpose of the site visit is to view the site and its relation to the surrounding area. It is *not* acceptable for testimony to occur outside the public hearing.

The Open Meeting Law does not apply to site visits, and the applicant may deny permission to members of the public from attending the site visit.

2.3 Hearings to be Public – All applications for special permits, variances, appeals or comprehensive permits shall be considered at properly noticed public hearings. NOTE: this is relocated. NOTE: this is deleted as it is covered in the previous section
All hearings are open to the public. No person shall be excluded unless he/she is considered by the Chair to be a "serious hindrance" to the workings of the Board.
Requests for modifications or changes in any conditions of previous permits or site plans attached thereto shall be heard at a public hearing, where such modifications or changes constitute an amendment to the original permit or decision.

2.4 Representation and Absence - An applicant may present the application or be represented by an agent or attorney. In the absence of any appearance without due cause on behalf of the applicant, the Board may act on the matter using the information it has otherwise received, or the Board may decide by unanimous vote that the petition be denied, or continue the matter to a new date certain.

2.5 Hearing Procedure (except for Appeals)– The Chair shall open the meeting, explain the procedures of the Board and open the evidentiary part of the hearing. All hearings proceed in the following order, with the Chair in charge of all portions of the hearing:

- a. Notation by the Board all submitted materials and observations of the site visit, if applicable
- b. Applicant's presentation and evidence gathering
- c. Questions from the Board
- d. Comments and questions from the public
- e. Applicant's response
- f. Final comments and questions from the public, applicant and Board, in that order
- g. Close of evidentiary part of the hearing or, if necessary, continuation of the hearing to a date and time certain.
- h. public meeting deliberations, including but not limited to:
 - identify, review, and make findings of fact
 - identify, discuss, and establish conditions

- review and make findings required under any applicable section of the Zoning Bylaw and Section 10.38
- Motion to approve, or deny followed by a second. Discussion, if any of the motion (motion should be in the form of the agenda item unless modified)

2.6 Findings and Decision - Consideration of an application shall be based on findings of fact which the applicant has presented as well as specific findings that the application meets all of the necessary provisions of the Bylaw. This process may be referred to as the deliberative part of a hearing, and is conducted within a public meeting.

Approval may be subject to conditions, modifications and reasonable restrictions necessary to ensure compliance with appropriate sections of the Bylaw.

The Board's written decision shall state the specific findings of fact and reasons for its decision based on the applicable sections of the Zoning Bylaw, including but not limited to Table 3, "Dimensional Regulations" and Section 10.38, "Specific Findings Required".

Conditions of a decision which require that the applicant return to a future public meeting for review and approval of site plans, management plans, signs or other matters shall include a date certain for said review. Denial of an application may be based on a finding that either: (1) insufficient information was submitted with the application in order for the Board to adequately review the proposal; or (2) a determination, based on specific findings, that the project does not meet the applicable sections of the Bylaw

2.7 Voting - The record shall show the vote of each Board member upon each question or, if failing to vote, indicating such fact. The unanimous vote of the three sitting Board members is necessary in granting special permits, variances, and appeals from the decision of the Building Commissioner. In the case of a comprehensive permit, a majority vote of the Board is necessary for approval. .

2.8 Reconsideration - Once a public hearing is closed, whether or not a vote has been taken and a decision has been made, taking of further testimony shall require reopening the public hearing preceded by: 1) a motion and vote by the Board to reconsider during a duly-constituted public meeting, and 2) advertising and notifying abutters in accordance with Chapter 40A, Section 11.

2.9 Extensions – In accordance with MGL Ch. 40A, Section 9, the required time limits for a public hearing may be extended by written agreement between the petitioner and the Board. A unanimous vote of the Board is required for an extension. A copy of such agreement shall be filed with the Town Clerk.

2.10 Filing and Recording – Decisions of the Board are final only when signed by the Board and filed with the Amherst Town Clerk. Time limitations for filing are specific to the type of application (see Article III, Time Requirements for various application types.)

No Board decision that grants a special permit, variance or comprehensive permit shall take effect until a copy of the decision is filed with the Registry of Deeds and bears the certification of the Town Clerk that twenty days have elapsed after the decision has been filed and no appeal has been filed. Or, if an appeal has been filed, the appeal was dismissed or denied in district or land court.

The applicant bears all responsibility for recording at the Registry of Deeds any special permit, variance or comprehensive permit granted by the Board.

Denials, withdrawals of applications and appeals of a decision of the Building Commissioner are not recorded at the Registry of Deeds.

2.11 Withdrawal - Any application may be withdrawn, without prejudice, by notice in writing to the Town Clerk with a copy to the zoning staff assistant at any time prior to publication of legal notice of the hearing in the newspaper. Requests to withdraw after publication of legal notice may be in writing as provided above, or they may be made by the applicant orally at the public hearing. After such publication, withdrawal requires approval by unanimous vote of the Board of Appeals at a public meeting. At least two members of the original Board panel assigned to the application must participate in the vote on the request for withdrawal.

Section 3: Miscellaneous

The Board may at its discretion seek information from any Town official, Board, committee, agency or any other person whom the Board believes may have appropriate expertise in any matter.

ARTICLE III - APPLICATIONS TO THE BOARD

Section 1: Types of Applications and Time Requirements

Special Permits – The Zoning Bylaw provides for specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit. Special permits, as defined under Article 10 of the Zoning Bylaw, may be issued only for uses which are in harmony with the general purpose and intent of the Bylaw. Such permits may impose conditions, safeguards and limitations on time or use.

Complete Application - Applicants are required to schedule an appointment with the Building Commissioner and zoning staff assistant to complete the application. This is a necessary step to ensure that all the information and documentation is provided for a review of the application. The final determination of a complete application shall be made by the Building Commissioner based on accuracy and completion of the plan requirements under Article III, Section 2.

Time Requirements for Board Action: When an application for a special permit is filed with the Town Clerk, the Board must hold a public hearing within 65 days from the day of filing. The decision of the Board must be filed with the Town Clerk within 90 days following the close of the public hearing as established by MGL Chapter 40A, Section 9. Failure by the Board to act within the prescribed time limits shall be deemed approval of the application, and a constructive grant of the permit.

Time Requirements for Appeals of a Decision: Any person aggrieved by the Board's decision for the special permit may appeal to the court within 20 days as provided in Section 17 of Chapter 40A.

Time Requirements for Use or Construction: Substantial use or construction of a project authorized by a special permit must commence within two years of filing the decision with the Town Clerk. (Section 10.37 of the Zoning Bylaw) Moreover, construction or operations granted by a special permit must conform to any subsequent amendment to the Amherst Zoning Bylaw unless the use or construction is commenced within a period of six (6) months after issuance of the special permit (Section 11.46 of the Zoning Bylaw.) In cases involving construction begun within such six-month period, such construction shall be continued through to completion as continuously and expeditiously as is reasonable in order to maintain the exemption from subsequent amendments to the Zoning Bylaw.

1.1 Variances – Petitions for variances from the terms of the Zoning Bylaw dealing with particular aspects of land or structures are allowed under Section 10.2 of the Zoning Bylaw. Use variances are not permitted. No variance shall be granted without specific findings by the Board that all four conditions of MGL Ch.40A, Section 10 have been met. The four conditions are:

1. Circumstances relating to soil conditions, shape, or topography that especially affect the property for which a variance is sought but do not generally affect the zoning district in which the land or structure is located
2. Facts showing that substantial hardship, financial or otherwise, will result from literal enforcement of the applicable zoning restrictions to the land or building

3. Facts supporting a finding that the relief sought will be desirable and without substantial detriment to the public good
4. Facts supporting a finding that the relief sought may be given without nullifying or substantially derogating from the intent and purpose of the Zoning Bylaws.

The Board may impose conditions and limitations both of time and of use, including the continued existence of any particular structures. However, the Board cannot impose conditions based on the continued ownership of the land or structures to which the variance pertains.

Time Requirements for Board Action: When an application for a variance is filed with the Town Clerk, the Board shall hold a public hearing within *65 days* from the day of filing. The decision of the Board shall be made within *100 days* from the date of filing the application with the Town Clerk. Failure by the Board to act within the prescribed time limits shall be deemed a grant of the variance.

Time Requirements for Appeals of a Decision: Any person aggrieved by the Board's decision for the variance may appeal to the court within *20 days*, as provided in Section 17 of Chapter 40A.

Time Requirements for Use or Construction: If the rights authorized by a variance are not exercised within *one year* of the date of such grant, the variance shall lapse. The required time limits for exercising said rights may be extended by written agreement between the petitioner and the Board for an additional period not to exceed six months, provided that the application for such an extension is filed with the Board prior to expiration of the variance (MGL Ch. 40A, Section 10). A copy of such agreement shall be filed in the office of the Town Clerk.

1.2 Appeals of an Order or Decision of the Building Commissioner – The Board of Appeals can receive the following appeals from:

- A person aggrieved by an inability to obtain a permit from the Building Commissioner
- A person aggrieved by enforcement action, or lack thereof, from the Building Commissioner
- The regional planning agency, an officer or board of the Town or of an abutting town aggrieved by an order or decision of the Building Commissioner or Town official perceived to be in violation of the Zoning Bylaw.

Time Requirements for the Petitioner: An appeal under MGL Ch. 40A, Section 8 must be taken by the petitioner within *30 days* from the date of the order or decision that is being appealed. The application for appeal must be filed with the Town Clerk, specifying the grounds for the appeal. Copies of the application of appeal also shall be filed by the petitioner with the officer or Board whose order or decision is being appealed and with the Zoning Board of Appeals.

Time Requirements for Board Action: As stipulated in MGL Ch. 40A, Section 15, a request shall be forwarded to the officer or Board whose decision is being appealed to transmit all documents and papers constituting the record of the case to the Board of Appeals. The Board shall hold a public hearing on any appeal application within *65 days* from the date of filing. The decision of the Board shall be made within *100 days* from the date of filing the application with the Town Clerk. The required time limits for a public hearing and said action may be extended by written agreement between the petitioner and the Board. A copy of such agreement shall be filed in the office of the Town Clerk.

Failure by the Board to act within the prescribed time limits shall be deemed an approval of the application and a constructive grant of the appeal. The following steps then must be taken:

- The petitioner who seeks such approval by reason of the Board's failure shall notify the Town Clerk in writing within 14 days from the expiration of the 100-day or extended time period.
- The petitioner shall send notice to parties in interest that any appeal of the grant must be made pursuant to MGL Ch.40A, Section 17.
- Any appeal of the grant must be filed with the court within 20 days from the date that the petitioner notified the Town Clerk in writing of the Board's failure to act.

Appeals Hearing Procedure: Hearings for appeals shall be conducted in the following order:

- a) Notation for the record of all submitted materials and observations of the site visit, if applicable
- b) Presentation of Building Commissioner's information and/or findings, if applicable
- c) Petitioner's presentation.

1.3 Comprehensive Permits – Pursuant to MGL Ch. 40B, any public agency or limited dividend or nonprofit organization proposing to build low/moderate-income housing may submit a single application to the Board of Appeals in lieu of separate applications to other applicable Boards such as the Select Board, Conservation Commission or the Planning Board. A comprehensive permit allows the Board to override local requirements and regulations that are inconsistent with affordable housing needs if environmental and planning concerns have been addressed. State requirements, including wetland restrictions, public health and building code requirements, may not be overridden.

The Board of Appeals shall notify each local Board or agency of the application by transmitting a copy of the comprehensive permit application for review and recommendation. The Board shall request the appearance of other Board representatives as are deemed necessary or helpful, and shall take into consideration their recommendations in making its decision.

Time Requirements for Board Action: The Board shall hold a public hearing within *30 days* of receipt of the application and shall render a decision, based upon a majority vote of the Board, within *40 days* after closing the public hearing. If the hearing is not convened or the decision is not filed with the Town Clerk within the time allotted, unless the time has been extended by mutual agreement between the Board and applicant (MGL Ch. 40B, Section 21), the application shall be deemed to have been granted and the comprehensive permit shall forthwith be issued. The time limits for exercising the permit shall be determined by law or by condition of the permit.

Time Requirements for Decision appeals: Any person aggrieved by the Board's decision for the comprehensive permit may appeal to the court within *20 days* as provided in Section 17 of Chapter 40A. Applicants aggrieved by a denial of the application, or by conditions attached to a grant of the comprehensive permit may appeal to the Massachusetts Housing appeals Committee through the Department of Housing and Community Development (DHCH) if less than 10 percent of the town's housing stock has been certified by DHCH as affordable housing (MGL Ch. 40B, Section 22). Such appeal shall be taken within 20 days after the date the decision was filed with the Town Clerk.

Section 2: Application Requirements

2.0 Application Form - Every application submitted for action by the Zoning Board of Appeals, including special permits, variances, comprehensive permits, and appeals from the decision of the Building Commissioner, shall be made on the official application form of the Board. Petitioners can obtain application forms from the zoning office located in the Planning Department or Inspection Services.

Prior to filing the application with the Town Clerk, the following information is required:

- a. A current (no more than 30 days old) and valid "Certified List of Abutters" from the Assessor's office, signed by the assessor
- b. Appropriate site plans, floor plans, management plans, memoranda or any other documents that the Building Commissioner or zoning staff assistant deem necessary (see Section 2.1)
- c. The appropriate fee as required in Section 2.5 and Appendix B.
- d. Applicants are required to schedule an appointment with the Building Commissioner and zoning staff assistant prior submission of an application. An application must be determined to be complete prior to filing with the Town Clerk. The final determination of a complete application shall be made by the Building Commissioner based on accuracy and completion of the plan requirements under Article III, Section 2.
- e. It is the responsibility of the applicant to furnish all supporting documentation with the application.

2.1 Plans to accompany application –

Initial application -Each application shall be submitted with one (1) full size hard copy set of all plans and materials. Additionally, each application shall be accompanied by one digital version of all plans and information. Each document submitted electronically shall be clearly labeled and shall be submitted at the time of application by thumb drive, CD, or by email. Submissions shall comply with the Amherst Digital Plan Submission Guidelines: <http://amherstma.gov/DocumentCenter/View/19752>

Transmittals - Site plans, management plans and other documents which come to the Board of Appeals with applications are transmitted to the Building Commissioner, Town Engineer, Fire Chief and Planning Board. Applications with plans may also be transmitted to the Conservation Commission, Board of Health, Historical Commission, Design Review Board or other relevant agency or board for an advisory opinion to the Board of Appeals or as required in the Zoning Bylaw. These agencies and boards shall have 35 days to submit their comments to the Board (Section 10.323 of the Zoning Bylaw).

Revisions prior to a public hearing - Any new or revised information submitted after the initial application is not guaranteed to be reviewed by Town officials prior to the public hearing. Any new or revised information shall be submitted no later than one week prior to the public hearing and shall be accompanied by one hard copy and one digital copy, as described herein.

Site Plans: Unless waived by the Board, all site plans shall be prepared by a Registered Engineer, Surveyor or Landscape Architect, and shall include the following:

- name of property owner, developer and name of engineer/surveyor/landscape architect or builder
- date, title and scale of plan
- separate locus map showing site location and location of buildings on surrounding properties, north arrow
- all existing lot lines, easements, rights-of-way, size of property in square feet, setback, side and rear yard dimensions as set forth in Table 3 of the Bylaw and zoning district
- location and use of all existing and proposed buildings and structures, including dimensions and heights
- location and names of existing or proposed streets, curb cuts, entrances and exits, parking areas, sidewalks, loading/service areas, utility systems
- existing and proposed contours and finished grade elevations, including location and volume of significant filling or excavations
- location of all natural features, including significant watercourses, wetlands, water bodies, bedrock outcroppings, stone walls and all trees, including drip lines, of eight (8) inch diameter at breast height (DBH) or larger on the subject property. In addition, all stone walls and trees, including drip lines, to be affected by clearing and/or construction within any portion of any public right-of-way immediately adjacent to the subject property shall also be shown, according to provisions of MGL Ch.40, Section 15C (Scenic Roads Act) and MGL Ch.87 (Shade Tree Act).
- location of containers and enclosures for storage and disposal of waste, recyclables and, where applicable, waste kitchen oil
- number and location of parking spaces required; compliance with and/or information regarding compliance with all applicable provisions of Article 7, including but not limited to maneuverability, screening, and design standards.
- calculation of total lot area, wetlands, building coverage and total lot coverage

Management Plan: For most special permits, the Board will require a management plan, which shall include the following:

for all applications:

- Trash and recycling, including size and quantity of storage containers, storage location including any enclosure or screening, frequency of pickup and name of hauling company
- Description of anticipated parking needs for all employees, tenants, residents, visitors and provisions for handicapped accessible spaces and methods of management and/or monitoring. Unless waived by the Board, said description is not a substitute for a site plan.
- Lighting, including hours of illumination, location, and wattage of fixtures. New lighting fixtures shall be accompanied by manufacturer's specification sheet including an image of the fixture. All new exterior lighting shall be designed or oriented to be downcast. Where applicable, the Board may require a photometric plan for existing and/or proposed lighting fixtures.
- A sign plan, if applicable. Said sign plan shall show the proposed location, size, materials, color, lettering and any illumination. Sign plan shall also show compliance with any other requirements under Article 8.
- Where applicable, a plan for snow removal, snow storage, and name of contractor
- Where applicable, a plan for landscape maintenance, including annual schedule of watering, fertilizing, mowing, pruning, leaf pick-up, and replacement schedule of proposed vegetation (NOTE: Language is almost identical to current management plan)

for restaurants and businesses, if applicable:

- Plan for the management of patrons regularly gathering outdoors on the property, including those awaiting entry, and monitoring of patrons inside the establishment, including monitoring occupancy limits. For establishments with occupancy greater than 100 people, or for high volume or large occupancy establishments, as determined by the Board, proof of Crowd Manager Certification shall be required.
- Hours of operation
- Noise management for any live or pre-recorded entertainment, vent fans, HVAC equipment and other significant sources of sound
- Trash, recycling and waste kitchen oil management (storage and disposal, including frequency of pick-up)
- Number of indoor/outdoor seats for patrons, including seasonal outdoor dining
- Lighting operation, including hours of illumination by location
- Storage for seasonal outdoor dining furniture
- Provisions and schedules for deliveries, loading, and unloading of any products, goods/services, - including take-out/delivery service, if applicable

for any residential rental use applications:

- A proposed lease agreement. The Board may require proof that an owner has informed future tenants of relevant Town Bylaw's including, but not limited to, noise, nuisance house, alcohol and keg licensing.
- A complaint response plan [amended 12/11/12]
- A copy of current or pending Rental Permit under the Town's Residential Rental Property Bylaw, if applicable
- Number of units, existing and proposed
- Number of bedrooms, existing and proposed
- Number of anticipated tenants
- If the property is not owner occupied, information about a Resident Manager, qualified professional management company, or similar provision for the property management of the use shall be submitted

for large residential applications:

- storage for vehicles, materials, equipment and/or household goods
- on-site recreational facilities
- noise, odor and dust mitigation measures
- maintenance and replacement schedules for site furnishings
- any other aspects of site management the Board shall deem necessary for adequate review of the potential site impacts of the application

Landscape plan: showing proposed vegetation to be planted, including street and shade trees, shrubs and other planting. Parking lot screening, by species and type shall be detailed. Existing vegetation of note (see “Site Plan” above) and any intermittent or year-round streams, ponds or other wetlands shall also be shown. Said plans shall also include the following, if applicable:

- Maintenance and replacement schedules for existing and/or proposed vegetation
- Plant list/key indicating plant location, species, size (at planting), caliper, and quantity

Building Plans: unless waived by the Board, building plans for any proposed improvements shall be prepared by a Massachusetts licensed architect or professional designer. Said plans shall include accurate, scaled renderings of existing and proposed conditions as follows:

- Elevations, showing exterior facades indicating materials, architectural features and colors proposed
- Floor Plans with dimensions showing schematic layout, use of interior spaces and means of egress

Lighting plan: showing location and type of outdoor lighting and lighting fixtures, said lighting to be designed to minimize glare and light spillover onto adjacent properties, streets and the night sky

Sign plan, including, but not limited to, dimensions, color, graphics, placement, lettering and any sign lighting

In addition, the Board may require submission of the following information/plans:

- a. **Soil erosion plan,** if applicable, showing all measures proposed to prevent or reduce erosion both during and after construction
- b. **Filling of land** – as per Section 3.12 or 5.10 of the Zoning Bylaw, if applicable
- c. **Traffic Impact Statement** – See Appendix A
- d. **Outside Consultants** – See Appendix B

2.2 Waivers or Additional Requirements – The Board shall have the right to modify or waive any of the submittal requirements under Section 2.1 above, or to request additional information necessary to render a decision. For waivers, the applicant shall submit, in writing, the specific reasons for a waiver including how or what information has been provided to allow the Board to make the decision without the required plan. To modify or request additional information, the Board must determine the specific additional information necessary to render a decision during a public meeting or public hearing.

2.3 Project Summary, Written Submissions - It is recommended that all applications be supported by a written project summary detailing all relevant facts of the application. Project summaries shall be filed with the application, with supplementary information submitted at the public hearing or within such time thereafter as may be fixed by the Board to be reviewed as part of a public meeting. Written submissions by the public must be submitted prior to the close of the hearing.

2.4 Revised Final Plans – Revised plans submitted to the Board as a condition of a special permit, variance or comprehensive permit shall be reviewed and acted on at a public meeting, preferably by a majority of the members who were sitting at the public hearing for the application.

2.5 Application Fees - All applications filed with the Town Clerk shall be accompanied by cash or check made payable to the Town of Amherst in the specified amount, depending on the nature of the application. See Appendix B for the schedule of fees.

2.6 Other Fees - In accordance with MGL Ch.44, Section 53G, the Board may impose Project Review Fees for applications which require the services of outside consultants for the review process due to the size, complexity or scale of a proposed project; the need for additional expertise in the review; or because of the potential impacts of a project. See Appendix C for an outline of the procedure for Project Review fees. In granting a special permit or variance, the Board may require a Performance Bond or other security to insure compliance with the conditions and approved Site Plan

2.7 Filing – To file with the Board, the petitioner shall submit the application and accompanying documents outlined above to the zoning staff assistant, who shall forthwith transmit the application to the Building Commissioner, agent for the Board of Appeals, for review and signature. The application is then filed with the Town Clerk for certification. The date of receipt, as stamped by the Town Clerk, shall be considered the date on which the application has been filed

ARTICLE IV – ADOPTION

The foregoing rules are hereby adopted this 23rd day of January, 2014 by the Amherst Zoning Board of Appeals and filed with the Town Clerk. All former rules of this Board, including those adopted 4/4/74, 10/1/78, 1/11/80, 2/14/85, 3/26/90, 1/19/06, 3/1/2007, 12/11/2012, 1/23/2014 are hereby nullified.

ERIC BEAL, CHAIR

THOMAS EHRCOOD, VICE-CHAIR

MARK PARENT, CLERK

APPENDIX A

Traffic Impact Statement (TIS)

The following information concerning Traffic Impact information may be required by the Board:

- a) Existing traffic conditions, including average daily traffic and peak hour volumes on adjacent streets.
- b) Levels of Service (LOS) of intersections within 500' of the site or any nearby intersection clearly impacted by the development. LOS shall be defined and calculated as described in the Highway Research Board, National Academy of Sciences - National Research Council, Highway Capacity Manual, 1965, as hereinafter updated. In general LOS signifies the following qualities of traffic operation:

<u>Level of Service</u>	<u>Quality of Traffic Operation</u>
A	Free flow, minimal delay.
B	Queues develop that occasionally may not be able to clear through one green light cycle at a signalized intersection.
C	Stable flow. Backups may develop behind turning vehicles.
D	Approaching unstable flow. Delay may be substantial (i.e., waiting through two cycles of a traffic signal).
E	Unstable flow, roadway is operating at capacity with long queues during the entire peak hour.
F	Forced flow, jammed intersection, long delays through entire peak hour.
- c) Projected number of vehicle trips to enter or depart from the site shall be estimated for peak hour and average daily traffic.
- d) Proposed pedestrian flow movement on the site.
- e) Impact of trips generated by the use on the site on the LOS of intersections within 500 feet or any clearly impacted nearby intersection.
- f) Impact of trips generated by the use on the site on the road capacities of existing adjacent streets.
- g) Sight distances and sight lines at the proposed entrance and exits.

APPENDIX B APPLICATION FEES

Fees accompanying applications to the Board of Appeals shall conform to the schedule below. In addition to ALL application fees, a flat fee of \$75 dollars is required for legal advertisement, plus \$25 dollars for a Certified List of Abutters. Payment for legal advertisement and Certified List of Abutters must be submitted with application.

Please note: If and after a Special Permit is granted, there is a \$10 filing fee with the Town Clerk and a \$75 dollar filing fee at the Registry of Deeds.

High Impact Uses –

Non-residential = \$500

Residential = \$300 + \$50/ new dwelling unit

- PURDs
- Residential uses with more than 6 units – e.g., Town Houses, Apartments, Subdividable/Converted Dwellings, Hotel or Motels, Inns, Hostel, Congregate housing for the elderly and disabled, fraternities/sororities
- Institutional Uses – e.g., Medical or residential institutions, cemetery, private lodge or club)
- Government and Public Service Uses
- Research and Industrial Uses

Moderate Impact Uses –

Non-residential = \$300

Residential = \$150 + \$50/ new dwelling unit

- Residential uses with 6 or fewer total units – e.g., Town Houses, Apartments, Subdividable/Converted Dwellings, Hotel or Motels, Inns, Hostel, Two-family detached
- Dwelling units in combination with stores or other permitted business or commercial uses
- Lodgers/Boarders/Roomers/Bed and Breakfast
- Supplemental apartments
- Retail, Business and Consumer Service Uses
- Motor Vehicle Related Uses
- Extensive Uses
- Flag lots (\$150 per flag lot)

Low Impact Uses - \$50

- Applications for/by owner-occupied single family properties– e.g., accessory uses, other than supplemental apartments, fences, signs

Other:

- Variances = \$300
- Appeals from a decision of the Building Commissioner = \$110
- Amendments or modifications to existing permits = Same fee as use

Comprehensive Permits & Affordable Housing Projects * = \$500 + 50 / new dwelling unit

- Limited Dividend Organizations - \$9 per unit
 - Non-Profit Organizations - \$3 per unit
 - Public Agencies and Local; Local Initiative pursuant to 760 CMR 45.00 - \$0
- * Projects including 10% or more affordable units as defined under Section 12.20, Amherst Zoning Bylaw are considered Affordable Housing Projects.*

Town Projects – The application fee for certain Town projects may be waived administratively by the Director of Conservation and Development.

APPENDIX C

PROJECT REVIEW FEES

In accordance with M.G.L. Chapter 44, Section 53G, the Zoning Board of Appeals may impose project review fees for those applications which require the services of outside consultants for the review process due to the size, complexity, or scale of a proposed project; the need for additional expertise in the review; or because of the potential impacts of a project. This determination shall be made by the Board during a public hearing after an initial presentation of a project.

The Board may engage attorneys, engineers, planners, landscape architects, architects or other appropriate professionals.

Fee Payment - The Board shall determine the amount of the initial deposit to be made and the amount of any additional funds that may be required during the review process. The applicant shall pay such fees to the Town of Amherst and such fees shall be deposited in a special account with the Town.

Expenditure of Fees - Outside consultants retained by the Board shall be paid from this special account. The expenditure of said fees shall be at the direction of the Board, without further appropriation. Said fees are to be expended only in connection with services rendered for the specific project for which the fees were collected.

Excess Fees - After completion of the Board's review of a project, any excess fee amount, including interest, shall be refunded to the applicant or the applicant's successor in interest and a final report of said account shall be made available to the applicant or applicant's successor in interest.

Failure to Pay Fee - Failure to pay a Review Fee by the applicant shall be grounds for disapproval of the subject application.

Administrative appeals - The choice of a consultant selected by the Board for the review of an application may be appealed in writing to the Select Board by the applicant, provided such appeal is initiated within two weeks of the selection. The ground for such appeal shall be limited to claims that the selected consultant:

- a) has a conflict of interest
- b) does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree in or related to the field at issue or three years or more years of practice in the field at issue or a related field.

The required time limits for action upon an application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Select Board within one month following the filing of the administrative appeal, the selection made by the Board of Appeals shall stand.

Reports - The Town Treasurer shall submit a report annually of said special account to the Select Board, the Town Manager and the State Bureau of Accounts. In addition, the Town Treasurer shall include the report in the annual Town Report.